

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1880.—Ordered to be printed.

Mr. ALLISON, from the Committee on Finance, submitted the following

REPORT:

[To accompany bill H. R. 2802.]

The Committee on Finance, to whom was referred the bill (H. R. 2802) for the relief of the owner of the bark Grapeshot, have had the same under consideration, and submit the following report:

After a full examination of all the papers and documents on file relating to this claim, the committee find that the facts are substantially set forth in the report made to the House of Representatives by the Committee of Ways and Means, on the 12th of December, 1879, to accompany said bill, which report is herein fully set forth, and has been substantially adopted by this committee as containing the material facts in the case.

[House Report No. 10, Forty-sixth Congress, second session.]

The Committee of Ways and Means, to whom was referred the bill (H. R. 103) for the relief of the owner of the bark Grapeshot, have had the same under consideration, and submit the following report:

Before and on the 15th day of July, 1858, George Law, of the city and State of New York, was the sole owner of the bark Grapeshot. On that day Wallerstein, Massett & Co., of Rio Janeiro, Brazil, to enforce payment of a bottomry bond previously given them by the master of said bark, to secure the payment of a loan of \$9,769.44, and a premium thereon of 19½ per cent. for the pending voyage, filed a libel against said bark in the district court of the United States for the eastern district of Louisiana.

Such proceedings were had in the cause that under said libel the said bark was sold, and the net proceeds of the sale, amounting to \$13,805.85, and also \$2,055.20, the net proceeds of the freight earned by said bark on said voyage, amounting in the aggregate to \$15,861.05, in gold, were, by order of said court, deposited in the registry thereof, subject to the order of the libelants.

The cause was appealed from the district to the circuit court for the fifth circuit of the United States, and, before final adjudication by said circuit court, the late civil war was commenced and the cause taken before a provisional judge of the Confederate States, and by him decided in favor of the libelants. It was subsequently returned to the circuit court of the United States and by appeal taken to the Supreme Court of the United States, by which it was remanded to the circuit court under an order for a commission to examine and report the amount justly due; and on the 29th day of March, 1875, a final decree was passed in favor of the libelants for \$4,392.25, together with 19½ per cent. maritime premium and 5 per cent. interest on said sum from July 3, 1858, until paid.

On the 27th day of May, 1876, the libelants received from George Law, the former owner of said bark, \$9,175.89, being the full amount of the judgment, including interest and costs, to which the libelants were entitled. Whereupon, and by virtue of such payment, on proper motion to and order of said circuit court, the said George Law was declared subrogated to all the rights of the libelants and to be entitled, in his own right, to all and singular the proceeds of said sale of said bark and to said freight, and to the said money deposited, as before stated, in the registry of said court.

The said sum of \$15,861.05 so deposited was placed in the Bank of Louisiana, in the city of New Orleans, to the credit of the treasury of the Confederate States. On the 17th day of June, 1862, Maj. Gen. Benjamin F. Butler, then commanding the Department of the Gulf, ordered and compelled the same to be transferred, for safe-keeping, to the Treasury of the United States, where it has ever since remained as a technical deposit by the government through its aforesaid military authority, but justly belonging to the said George Law, and payable to him in gold.

The committee therefore recommend the passage of the accompanying substitute for the bill referred to them.

The committee, however, think it wise to add to said report a copy of the record of the proceedings with reference to the bark Grapeshot had and held in the circuit court of the United States, fifth circuit and district of Louisiana, and therefore append hereto a copy of said record:

United States circuit court, district of Louisiana.

WALLERSTEIN, MASSETT & Co. }
vs. } No. 3301.
 BARK GRAPESHOT. }

The libelants' exceptions to the commissioner's report came on to be heard, and were argued by counsel.

On consideration whereof, and for reasons assigned in writing, it is ordered and decreed by the court that all the exceptions be overruled, the report be confirmed, and that libelants do recover from the proceeds of the bark Grapeshot the sum of four thousand three hundred and ninety-two & $\frac{2}{100}$ dollars, together with nineteen and one-half per cent. maritime premium on said sum and five per cent. per annum interest on said sum of \$4,392.25 from 3rd July, 1858, until paid, and costs of suit.

It is further ordered that same be paid by the clerk of this court out of said proceeds in the registry now on deposit in the United States Treasury at Washington City.

W. B. WOODS,
Judge.

(Endorsed on the back:) 3301. U. S. cir. court. Decree entered and filed March 29th, 1875.

United States circuit court, fifth circuit and district of Louisiana.

WALLERSTEIN, MASSETT & Co. }
vs. } No. 3301.
 BARK GRAPESHOT. }

The rule for a new trial taken by claimant on 31st March, 1875, was called up.

I. McConnel for plaintiff in rule, Horner & Benedict for defendants in rule.

When, after hearing counsel, it is ordered and adjudged that the decree entered on 29th March, 1875, be amended by charging against the amount to be paid the libelants the costs of appeal to the Supreme Court of the United States, amounting to (\$475.26) four hundred and seventy-five $\frac{2}{100}$ dollars, as appears from the mandate.

It is further adjudged and decreed that after deducting the amount accruing to the libelants under the decree in this cause, and all legal costs and charges, the balance of the proceeds arising from the sale of the said bark Grapeshot and the freight, which were deposited in the registry of the court, but are now deposited in the U. S. Treasury, and which deposit amounted to fifteen thousand eight hundred and sixty-one $\frac{9}{100}$ dollars, be paid over to George Law, the claimant herein, or his proctor, and that a new trial be refused.

April 17th, 1875.

W. B. WOODS,
Judge.

Motion of subrogation and order.—Entered and filed May 27, 1876.

In the circuit court of the United States, fifth circuit and district of Louisiana.

WALLERSTEIN, MASSETT & Co. }
vs. } No. 3301.
 THE BARK GRAPESHOT. }

On motion of Horner & Benedict, proctors for Wallerstein, Massett & Co., libelants in the above entitled and numbered suit, and on suggesting that they have this

day received from George Law, the claimant herein, the sum of nine thousand one hundred and seventy-five and $\frac{80}{100}$ dollars, being the full amount of the judgment herein rendered in favor of said libelants, with interest thereon to this date, and costs herein, less the costs in the Supreme Court of the United States:

It is now ordered by the court that George Law, the said claimant herein, be and is now subrogated to all and singular the right, title, and interest of the said libelants, Wallerstein, Massett & Co., in, to, and under the judgment herein rendered in their favor, amended and signed on the 17th day of April, 1875, by the Hon. William B. Woods, judge.

And it is further ordered that the said George Law, in virtue of this payment and subrogation to the rights of said libelants, Wallerstein, Massett & Co., herein as aforesaid, and also in his own right as having judgment for the residuum of the proceeds in the registry herein, is now recognized and declared to have the full and sole right, title, and interest to all and singular the funds and property realized herein, of every nature and description, whether from the proceeds of the sale of the said bark Grapeshot or from the freight thereof or otherwise, and more especially to any and all proceeds thereof, and funds formerly in the registry of the court herein, and were deposited by order of court herein for safe-keeping in the Treasury of the United States, as expressed in the said judgment herein rendered as aforesaid.

HORNER & BENEDICT,
Proctors for Libellant.

United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing five (5) pages contain true and correct copies from the original of record in this office in the case of Wallerstein, Massett & Co., vs. Bark Grapeshot, No. 3301 of the docket of this court.

Witness my hand and the seal of said court, at the city of New Orleans, this 1st day of June, A. D. 1876.

[SEAL.]

F. A. WOOLFLEY, *Clerk.*

I, William B. Woods, United States judge for the fifth judicial circuit and district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 1st day of June, A. D. 1876.

W. B. WOODS,
U. S. Judge.

Your committee made inquiry at the Treasury Department, with a view of ascertaining whether any objections were to be found there to the passage of the bill, and the Secretary of the Treasury referred your committee to a letter from Hon. B. H. Bristow, then Secretary of the Treasury, to Hon. George F. Edmunds, chairman of the Committee on the Judiciary, dated May 12, 1876; which letter is as follows:

TREASURY DEPARTMENT,
Washington, D. C., May 12, 1876.

SIR: In compliance with the request of Thomas J. Durant, esq., that this department would send to the Judiciary Committee of the Senate such information as may be in its possession relating to the subject-matter of Senate bill No. 274 "For the relief of the register of the circuit court for the fifth judicial circuit and district of Louisiana," I inclose herewith copies of certain letters and papers now on file in this department.

1. Letter from the cashier of the Bank of Louisiana to Maj. Gen. B. F. Butler, dated June 17, 1862.

2. Letter from General B. F. Butler to the Secretary of the Treasury, dated June 17, 1862, inclosing draft for £3,000.

3. Letter from General B. F. Butler (not signed) to the Secretary of the Treasury, dated June 23, 1862, inclosing 5 original certificates of deposit signed by E. C. Elmore, treasurer of the Confederate States. Copies of those certificates are inclosed with No. 3.

4. Letter of John J. Cisco, assistant treasurer, to the Secretary of the Treasury, dated June 28, 1862, acknowledging receipt of draft for £3,000, &c., &c.

5. Letter from John J. Cisco, assistant treasurer, to the Secretary of the Treasury, dated August 2, 1862, stating net proceeds of the above draft, &c., &c. With reference to the question whether or not the draft of £3,000 exacted from the bank by General Butler represented the moneys which were derived from the sale of the Grapeshot, and were deposited in the bank by the clerk of the court, the committee will note that the letter from the cashier stated that the draft is "in payment of the balance of \$15,483.73, which sum was drawn from the bank by the clerk of the circuit court of the Confederate States," &c., &c. As the above sum was the balance of an account, it may well be that it represents other moneys than the sum deposited as the proceeds of the sale of the Grapeshot. That other moneys were included therein may be inferred from the fact stated in the report of the case of the Grapeshot (9 Wallace, 129) that the vessel was sold by order of court in 1858, and that the proceeds were \$13,805.85. It does not directly appear from the correspondence with General Butler that the 5 certificates of deposit in the Confederate treasury represent the same moneys which had previously been deposited in the bank, and which, as the cashier states, were afterwards "drawn from the bank by the clerk of the circuit court of the Confederate States." That the moneys deposited in the Treasury were intended to represent those returned to the clerk by the bank may be inferred from the circumstance that the amount stated to have been paid over by the cashier to the clerk equals the aggregate of certificates Nos. 1, 2, and 3, with an excess of 20 cents only. Certificates 4 and 5 may be supposed to represent moneys in the registry of the court never deposited in the bank.

The bill assumes that there is in the Treasury the sum of \$15,861.50 gold, which sum is deposited to the credit of the registry of the court. It further assumes that that sum is the fund to be distributed in the matter of the Grapeshot; and it directs that it be returned to the registry, with interest since July 1, 1862.

It appears by the letter of the assistant treasurer that the draft of £3,000 was converted into currency; that it produced net in currency, at $26\frac{1}{2}$ per cent. premium, \$16,773.90, and that that sum in currency was deposited in the Treasury to the credit of the *Treasurer of the United States*. It will be perceived that the sum in the Treasury represents, at the then existing premium, much less than \$15,861.50 gold, and, if the assumption with regard to certificate No. 3 is correctly made, it represents other moneys than those derived from the Grapeshot.

The conclusion implied in the bill that the draft of £3,000 represented the moneys which had been deposited in the registry of the court may perhaps be doubted, since it appears that those moneys were withdrawn from the bank by the Confederate clerk, and were afterwards deposited with the Confederate States treasury, whence they were never recovered. The draft was apparently exacted from the bank by General Butler to replace those moneys, which he assumed to have been improperly paid over to the clerk of the Confederate court, the same person who had previously deposited them as the clerk of the United States court. Whether or not this exaction was warranted in law and in justice, and whether or not Congress may hereafter be called upon to repay the money so exacted, are questions important for the consideration of the committee.

If Congress shall decide that the proceeds of the draft in the Treasury should be paid into the registry of the court, no reason is perceived why interest should be paid thereon, as the United States has been holding them merely as trustee, and without any beneficial use to itself.

Very respectfully,

B. H. BRISTOW, *Secretary.*

HON. GEORGE F. EDMUNDS,

Chairman of Committee on the Judiciary, United States Senate.

This letter explains how the money arising from the sale of the Grapeshot and from its net earnings of freight came into the Treasury, and impliedly raises the question whether or not other applicants may not appear for a portion of the said fund; but your committee, after a full investigation, are of opinion that no such claim can arise in the case, as it seems to be assumed in the several decrees and orders entered in the circuit court that the money arising from the sale, and also from freights, was deposited in the Treasury; and the decree of Judge Woods seems to be based upon this state of facts.

This case was in the United States district and circuit courts of Louisiana and in the Supreme Court of the United States from 1858 to 1876; and during the period from 1862 to 1876 it seems to have been assumed that the proceeds of the sale were in the Treasury of the United States, being placed there under the order of General Butler.

The leading facts in the case are found in 9 Wall., p. 129.

Your committee find that George Law was the owner of the bark Grapeshot; that he paid the full amount of the decree in favor of Wallerstein, Massett & Co., and that by order of the court was subrogated to all their rights; and that the sum of \$15,861.05 was realized from the net proceeds of the sale and the net proceeds of the voyage from Rio de Janeiro to New Orleans; and the committee recommend the passage of the bill, with an amendment striking out fifty and inserting five in line six.

S. Rep. 381—2

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